

**ILLINOIS LABOR RELATIONS BOARD
PETER R. MEYERS, ARBITRATOR**

In the Matter of the Interest
Arbitration between:

**ILLINOIS FRATERNAL ORDER
OF POLICE LABOR COUNCIL,**

Union

And

**SOUTHERN ILLINOIS
UNIVERSITY AT
CARBONDALE, ILLINOIS,**

Employer.

ILRB Case No. **S-MA-10-340**

FMCS Case No. **11-04238-A**

DECISION AND AWARD

Appearances on behalf of the Union

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|--------------------------------------|----------------------------------|
| Becky S. Dragoo—Field Supervisor | Jerry Nuss—Police Officer |
| James L. Daniels—Staff Attorney | Adam Cunico—Police Officer |
| Bill Dozier—Vice President/Patrolman | Scott Miller—Police Officer |
| Dennis Followell—Patrol | Jason P. Russell—Police Corporal |

Appearances on behalf of the Employer

Deborah J. Nelson—Senior Associate General Counsel
Kevin Bame—Vice Chancellor for Administration and Finance
Todd Sigler—Director, Department of Public Safety
Brent Patton—Director, Labor and Employee Relations

This matter came to be heard before Arbitrator Peter R. Meyers on the 1st day of February 2012 at the Southern Illinois University Carbondale Campus, Anthony Hall, Room 321, 1265 Lincoln Drive, Carbondale, Illinois. Ms. Becky S. Dragoo and Mr. James L. Daniels presented on behalf of the Union, and Ms. Deborah J. Nelson presented on behalf of the Employer

Introduction

The most recent collective bargaining agreement in effect between Southern Illinois University at Carbondale, Illinois (hereinafter “the University”), and the Illinois Fraternal Order of Police Labor Council (hereinafter “the Union”) was in effect from July 1, 2007, through June 30, 2010. The parties engaged in collective bargaining for a successor agreement over the course of several months, and they also participated in a session with a federal mediator, and they were able to resolve many of the issues to be governed by their new Agreement. Despite their efforts, however, the parties were unable to reach agreement on certain issues between them.

Pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.*, this matter was submitted for Compulsory Interest Arbitration and came to be heard by Neutral Arbitrator Peter R. Meyers on February 1, 2012, in Carbondale, Illinois. The parties submitted written, post-hearing briefs in support of their respective positions on the issues remaining in dispute; the University’s post-hearing brief was received on or about April 18, 2012, while the Union’s was received on or about April 19, 2012.

Relevant Statutory Provisions

ILLINOIS PUBLIC LABOR RELATIONS ACT 5 ILCS 315/1 *et seq.*

Section 14(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparisons of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Issues Submitted for Arbitration

The following economic issues remain in dispute between the parties:

1. Wages;
2. Longevity Steps;
3. Shift Differential; and
4. Unpaid Closure Days.

Discussion and Decision

Southern Illinois University at Carbondale, a public research institution, is part of the larger Southern Illinois University system. This system also includes a campus in Edwardsville, a medical school in Springfield, and a dental school in Alton, as well as a number of off-campus programs across the United States. Like many larger public universities, the Carbondale campus is something of a self-contained community. In addition to classroom, residential, and administrative buildings, the Carbondale campus includes a large student recreation center, dining areas, a student center, a library, bookstore, fitness facilities, a health center, and a number of other facilities.

The University's Department of Public Safety (hereinafter "the Department") bears the responsibility for public safety on the Carbondale campus. The Organization represents three different bargaining units within the Department: Officers and Corporals; Sergeants; and Telecommunicators and Parking Agents. The Officers and Corporals unit at issue here is composed of twenty-three officers and five corporals.

Section 14(h) of the Illinois Public Labor Relations Act, 5 ILCS 315/14(h) (hereinafter "the Act"), sets forth the factors that must guide any analysis and resolution of the issues that remain outstanding between the parties here. As this and other Interest Arbitrators routinely have noted, not all of the listed factors in Section 14(h) of the Act will apply with equal weight in an interest arbitration proceeding, and some of these factors might not apply at all. It is critical, therefore, to identify which of the statutory factors will play a role in the resolution of this matter.

It generally is true that in an interest arbitration proceeding involving economic

issues, internal and external comparables, the consumer price index or cost of living, overall compensation, and the interest and welfare of the public all play a significant role. These factors will play such a role here. The employer's financial ability to pay the costs associated with the proposals for resolving outstanding economic issues will not automatically apply. An employer must affirmatively raise any purported inability to pay. Once this assertion is raised, the employer bears the burden of proving that it is unable to pay such costs, and this burden is not easily met. In this particular case, the University apparently is not alleging that it is unable to pay these costs, but it has emphasized the many financial challenges that it currently faces. As this Arbitrator has found in other interest arbitration matters, the financial constraints due to the current and widespread economic downturn do fall within the scope of the other factors, pursuant to Section 14(h)(8) of the Act, that "are normally or traditionally taken into consideration" when resolving outstanding issues of an economic nature.

Section 14(h)(7) provides that changes in the "foregoing circumstances during the pendency of the arbitration proceedings" is one factor that may apply to guide an interest arbitrator's analysis and decision. In this matter, the Union submitted a Motion to Supplement and Supplemental Statement after the arbitration hearing was conducted and after the parties had filed their post-hearing briefs. The supplemental material offered by the Union in connection with this Motion relates to information contained within the University's annual audited financial report for the fiscal year ending June 30, 2011, which was made available for public viewing on or about April 19, 2012, shortly after the deadline for the submission of the parties' post-hearing briefs. The University responded

to this Motion by asserting that the financial report, which the University terms a “compliance examination,” does not represent any change in circumstances or provide any relevant information. The University did not object to the admission of this supplementary material into the evidentiary record, although it did urge that this material be given little weight. This Arbitrator granted the Union’s Motion, and will determine what weight shall be given to the supplementary material in conjunction with the analysis to come.

As for the two other statutory factors, neither of these appear to be particularly relevant to the resolution of the outstanding impasse issues in this proceeding. The lawful authority of the University is not in question, and the parties’ stipulations address mostly procedural matters.

As for the internal and external comparables, appropriate comparisons must be identified. In the typical interest arbitration involving a unit of local government, external comparables are chosen based upon a variety of geographic and demographic factors. Because the employer here is a public university, much of the geographic and demographic data that usually helps determine appropriate external comparables may not be relevant, useful, or even available, at least to the extent that the external comparables are other public universities.

One important consideration when determining appropriate external comparables is to review any past interest arbitration proceedings between the same parties for evidence of which external comparables were established in those proceedings. The Union has pointed out that in a 2003 interest arbitration between the University and the

Union, Arbitrator Lamont Stallworth found that the following universities constituted appropriate external comparables: Southern Illinois University at Edwardsville, Eastern Illinois University, Western Illinois University, Illinois State University, Northern Illinois University, and the University of Illinois – Urbana/Champaign. The Union proposes the adoption of these same universities as external comparables, and the University agrees with this list of universities as appropriate external comparables. The University, however, suggests the addition of the City of Carbondale as an external comparison. In support of this proposed addition, the University asserts that in a previous matter, the FOP agreed that Carbondale and the University were comparators. The University also contends that Carbondale, as a local municipal jurisdiction, would add relevant information relating to the public's interest in attracting and retaining high quality personnel in the University's geographical area.

The University's arguments in favor of adding Carbondale to the list of appropriate external comparables are thought-provoking, but I find that they ultimately do not provide a sound basis for Carbondale's inclusion. As interest arbitrators previously have found, the most appropriate external comparables for a bargaining unit of university employees will be found among other universities. There are too many fundamental differences between a university and a municipality for two such entities to be considered appropriate comparables. This is even true where, as here, the university is located within the very municipality that is proposed as a comparable. Universities and municipalities face very different challenges, their operations are funded through very different mechanisms, and their employees typically handle different and discrete sets of

duties. Although they both fall under the wide umbrella of “police officers,” the officers who work for the University must address very different situations and issues on the campus of a large university, with a somewhat young and transient population comprised mostly of students, than will officers who are employed by and responsible for public safety and security in Carbondale.

Even as so-called secondary comparables, I find that Carbondale and the other municipalities mentioned by the University – Herrin, Marion, Mt. Vernon, DuQuoin, and Murphysboro – do not offer an appropriate basis for comparison. The record does not establish whether the University’s officers go through training that is at all similar to the training required of officers working for these municipalities. There has been no conclusive showing that the duties of the University’s officers, who handle everything from the problems associated with daily campus life to large on-campus events, have much in common with the duties of the officers who work for the cited municipalities. In short, I find that the evidentiary record in this matter does not support a finding that the cited municipalities are, in any way, appropriate external comparables to the University. In line with Arbitrator Stallworth’s reasoning and ultimate finding on the issue of municipalities as external comparables, this Arbitrator therefore finds that the municipalities proposed by the University as additional, or alternatively secondary, external comparables shall not be accepted and utilized for this purpose. I hold that the list of appropriate external comparables shall be limited to the following universities: Southern Illinois University – Edwardsville, Eastern Illinois University, Western Illinois University, Illinois State University, Northern Illinois University, and University of

Illinois – Champaign.

Proper consideration also must be given to the proposed internal comparables. In the 2003 interest arbitration proceeding between these parties, Arbitrator Stallworth found that the appropriate internal comparables were the University's other non-faculty bargaining units. The Union argues that the internal comparisons with other bargaining units of non-sworn personnel within the University will not be as appropriate or as relevant as external comparisons to the other State universities. Although the external comparisons may be more useful than the internal comparisons, the provisions that apply to other bargaining units of University non-faculty employees nevertheless do offer some helpful and relevant guidance here, and they shall be considered.

This analysis now moves on to a consideration and resolution of each of the impasse issues that remain in dispute between the parties. It is important to note that because each of these issues is economic in nature, this Arbitrator must resolve each one by accepting and adopting the final offer of one or the other of the parties hereto. Section 14(g) of the Act specifies that for an impasse issue that is economic in nature, an interest arbitrator is limited to choosing one of the final offers as the more appropriate resolution and may not fashion any sort of compromise resolution. An arbitrator-fashioned compromise resolution is appropriate only for issues that are non-economic in nature.

1. Wages

The Union's final offer on the impasse issue of wages is as follows:

A. Patrol Officers

7/1/2010 – 1% salary increase to each step of the salary matrix

7/1/2011 – 3% salary increase to each step of the salary matrix
7/1/2012 – 3% salary increase to each step of the salary matrix
7/1/2013 – Each step of the pay plan will be adjusted by the announced campus wage program. Should the publicly announced campus wage program fall below 2.5%, either party may request to open negotiations for the purposes of wages only, up to impasse procedures (interest arbitration). This shall not be precedent setting for future wage increases, and does not constitute an acceptance of the historical practice of standard wage increases for future negotiations (breakthrough).

The Union proposes the foregoing salary increases be retroactive to the effective date of each year, where applicable, on all hours paid or worked as if paid. If the Union's final offer is adopted, retroactive amounts due employees to be paid via separate check no later than sixty (60) days after issuance of the Arbitrator's Award.

B. Corporals

7/1/2010 – 1% salary increase to each step of the salary matrix
7/1/2011 – 4% salary increase to each step of the salary matrix
7/1/2012 – 4% salary increase to each step of the salary matrix
7/1/2013 – Each step of the pay plan will be adjusted by the announced campus wage program. Should the publicly announced campus wage program fall below 2.5%, either party may request to open negotiations for the purposes of wages only, up to impasse procedures (interest arbitration). This shall not be precedent setting for future wage increases, and does not constitute an acceptance of the historical practice of standard wage increases for future negotiations (breakthrough).

The Union proposes the foregoing salary increases be retroactive to the effective date of each year, where applicable, on all hours paid or worked as if paid. If the Union's final offer is adopted, retroactive amounts due employees to be paid via separate check no later than sixty (60) days after issuance of the Arbitrator's Award.

The University's final offer on the impasse issue of wages is as follows:

FY11 (7/1/10 – 6/30/11): 0%
FY12 (7/1/11 – 6/30/12): 1% on 1/1/12
FY13 (7/1/12 – 6/30/13): 1% on 7/1/12
FY14 (7/1/13 – 6/30/14): 2% on 7/1/13
(if the Arbitrator provides for a four-year agreement)

As often is true in interest arbitrations, this issue of wages is the most contentious one that remains between the parties. Most of the evidence in the record and much of the arguments that the parties have articulated here relate to which of the competing final wage offers should be adopted.

In presenting their evidence and in making their arguments in post-hearing briefs, the University's finances were the first substantive focus for both parties. This particular matter is, in fact, a critical element of the analysis of this wage issue, and it therefore makes sense to start there. The University has pointed out that there are only two primary funding sources that may be used to pay the salaries of its police officers: State appropriations and student tuition. The University does have other funding sources, but the monies from these other sources apparently may not be used for such salaries.

Because of various forms of restrictions on how certain funding may be used, a generalized look at the University's funding, resources, and assets may not provide the most useful picture of the University's financial situation relative to this wage issue. Instead, it is more appropriate to look at the two funding sources from which officer salaries may be paid and to analyze this funding in light of all other expenses that also must come out of those same funding sources.

The evidentiary record indicates that appropriations from the State of Illinois constitute the largest single revenue source for the University, accounting for about forty percent of its total revenues. The State of Illinois' budget difficulties, particularly the deficits that it faces, have been well-documented. These economic challenges have caused the State to cut spending in a number of different areas, including appropriations

to the State's public universities and colleges, as well as other spending relating to higher education. Illinois' public universities and colleges, in turn, have had to cut their own spending or seek out other revenues to make up for cuts and delays in State-based funding and reimbursements.

There are limits, of course, to what the University can do to increase revenues from student tuition, and the State's continuing budget woes suggest that the University cannot assume that it will receive any increase in funding from that source in the near term. A review of the documents showing the University's overall financial situation, however, indicates that the University's economic condition has improved from what the University has characterized as a "fiscal crisis" during the 2011 fiscal year. In its post-hearing brief, the University has acknowledged that this fiscal crisis has passed, although the University currently is not without financial challenges. The financial data in the evidentiary record conclusively show that the University's financial condition has improved, although prudence and restraint still are necessary because challenges remain.

The University has not asserted that it is unable to pay the costs associated with the Union's proposals here, including the Union's final offer on wages. Instead, the University has stressed that it must continue to practice restraint with regard to its costs and expenses. Although the University's financial situation certainly does argue in favor of continued restraint, it does not necessarily preclude adoption of the Union's final offer on wages, even though that offer is higher than what the University has proposed. The impact of the need for prudence in the University's financial affairs is reflected, to some degree, in the fact that the University has prevailed on two of the other important

economic issues here.

Focusing on the express statutory factors, the external comparables are particularly important in determining which of the parties' final offers on wages is more appropriate. The University has asserted that because the cost of living index is higher in four of the six communities where the external comparables are located than it is in Carbondale, salaries would have to be higher in those other communities in order to achieve the same standard of living than is possible at a lower salary in Carbondale. Although the raw cost-of-living numbers do suggest that this is true, a deeper look at the data is necessary. When the consumer price index is broken down into its component parts, it is clear that the overwhelming reason for any difference in cost of living among these different communities is the cost of housing. Among the other elements that make up the overall cost-of-living index, Carbondale ranks higher than the externals on some measures, about the same on others, and a bit lower on the rest. Not counting the housing component, the consumer price index for Carbondale is about the same as it is in all of the communities in which the external comparable universities are located. It also is important to note that because these local consumer price indices are based on small sample sizes, the resulting volatility renders this data more subject to measurement error and other issues. For this reason, the national or regional consumer price index data is better suited for use in this analysis. National and/or regional consumer price data yields a much more accurate understanding of how salaries have fared against rising consumer prices over time.

Based on this analysis, the cost of living data from the external comparables does not, despite the University's argument, absolutely argue in favor of its own lower wage

proposal. Instead, because housing is the component that accounts for most of any difference in consumer prices between the University's setting in Carbondale and the communities where the external comparables are located, the wage data from the University and the external comparables may be assessed in a generally straight-up manner.

The evidence in the record demonstrates that the wages paid to the University's officers fall below the average salary figures established across the external comparables. This gap remains at each five-year step on the salary schedule, including the top pay rates. Looking at how the pay structure for the University's officers and corporals compares to the external comparables under each party's wage offer, it is evident that the University's salary structure will remain below the average established by the external comparables, except for the top of the pay scale for officers. When the available consumer price data for 2010 and 2011 are considered, it is evident that the University's wage offer is insufficient to allow its salary scale to keep pace with the external comparables, nor is it sufficient to allow its officers to maintain their standard of living against the impact of rising consumer prices.

This analysis establishes that the wage data from the external comparables and the consumer price both favor adoption of the Union's final wage proposal. As for internal comparables, the Union has emphasized that the other bargaining units, comprised of non-sworn employees, accepted University wage proposals under protest and only after striking and filing unfair labor practice charges. Under the circumstances, since there was no real analysis of the statutory factors performed in those cases, the internal

comparisons cannot be given as much weight as the external comparisons.

The interests and welfare of the public refer, in this case involving a public university, to students, faculty, and staff. Obviously, the presence of a skilled and well-trained security department is of great importance to the campus community, and the slightly higher wage proposal submitted by the Union will assist the University in maintaining its high quality security forces. The overall compensation received by the employees, which must include consideration of the resolution of the other issues presented here, also favors adoption of the Union's slightly higher wage proposal.

The remaining statutory factors do not bear much relevance to the instant wage issue. The considerations and analysis set forth above establish that the relevant and applicable statutory factors do favor the Union's wage proposal over the University's, and these factors indicate that the Union's position on wages is more appropriate and reasonable than that of the University.

Accordingly, this Arbitrator finds that the Union's proposal on the impasse issue of wages is more reasonable and appropriate in light of the relevant statutory factors and evidence. The Union's proposal on this issue therefore shall be adopted and included in the parties' collective bargaining agreement therefore shall remain unchanged, and it is set forth in the Appendix attached hereto.

2. Longevity Steps

The Union's final offer on the impasse issue of longevity steps is as follows:

Effective 7/1/2012: Add a nine (9) year longevity step equal to 1% greater than the existing eight (8) year longevity step. Each successive step 1% higher than the preceding step consistent with the current practice. Eliminate the twenty-

eight (28) year step.

Effective 7/1/2013: Add an eleven (11) year longevity step equal to 1% greater than the ten (10) year longevity step. Each successive step 1% higher than the preceding step consistent with the current practice. Eliminate the twenty-six (26) year step.

The Union proposes the longevity step changes effective 7/1/2012 be fully retroactive in the event the Arbitrator's Award is received after 7/1/2012.

The University's final offer on the impasse issue of longevity steps is to maintain the status quo.

As the party seeking to change the status quo, the Union bears the burden of proof. The long-standing and well-established principle in interest arbitrations is that a party seeking to alter the status quo must show a "compelling need" for the proposed change.

The Union supports its proposed change to the longevity steps by pointing out that it takes longer for the University's officers to reach the top of the wage scale, and that these employees lag behind their colleagues employed by the external comparables at each of the steps that make up the longevity matrix. The Union also emphasizes that although the parties apparently agreed to certain modifications to the longevity matrix in the late 1980s and early 1990s, there have been no mutually agreed modifications since then despite the Union's repeated bargaining proposals on the issue. The Union points to the fact that the pay of the University's officers lags behind the pay of officers employed at SIU's other campus at Edwardsville, characterizing this as a matter of equity.

The University counters by asserting that it takes longer for its officers to reach the top of the pay scale because there are more steps in the University's longevity matrix than appear in the longevity systems in place across the external comparables. The

University also argues that the pay of its officers is not lagging further behind the pay earned by officers employed at the external comparables.

Comparing the University's longevity matrix with those of the external comparables reveals that there are, in fact, significantly more steps in the University's matrix than what appears across the external comparables. Given that the Union's proposal does not involve decreasing the number of steps, but rather re-arranging the matrix so that two of the existing steps effectively are moved to earlier points in an officer's career, it would appear that the number of steps is not the problem for the Union. The Union's proposal ultimately would reduce the number of years it would take for an officer to reach the top of the pay scale from twenty-eight years to twenty-four.

Much of the Union's argument in favor of this proposal actually mirrors its arguments in favor of its wage proposal, which has been adopted here. Adoption of the Union's wage proposal does serve to address part of the gap between the pay earned by the University's officers and the pay earned by their colleagues working for the external comparables. If the Union's proposal on longevity were to be adopted as well, these two proposals together would result in significant pay increases during certain early years in an officer's career with the University.

The Union's proposed change to the longevity matrix also would constitute an unbalanced and somewhat unprecedented overall change to the established wage and longevity structure. Longevity-based pay increases generally are intended, of course, to reward long-term and experienced employees. The current longevity matrix is structured to accomplish this very goal, with steps every two years beginning with the fourth year of

an officer's employment and continuing until the officer reaches the top of the pay scale in his or her twenty-eighth year of employment. By replacing the twenty-six and twenty-eight year steps with new steps at years nine and eleven, I find that the Union's proposal would radically alter that biennial structure which was previously negotiated between the parties, making the longevity structure more heavily front-loaded than it currently is. Under the Union's proposal and with the starting probationary wage as the first step, officers would move through the first eleven steps of the longevity matrix in their first twelve years of employment with the University, then would have only six more longevity steps after that. As a result, the officers would receive much of their longevity-based reward at a far earlier stage of their employment, which would not particularly correspond to the basic purpose of longevity pay.

It must be noted that the University's proposal that the officers take four unpaid days, or closure days, has not been adopted, as set forth below, which supports maintaining the status quo on this longevity issue. These proposed closure days would have decreased officer pay while correspondingly reducing the University's personnel costs. That reduction will not occur during the effective term of the parties' new contract, however, which helps to cushion any negative effects of maintaining the longer longevity matrix that already is in place for the University's officers.

Although it is true that the Union's proposal would decrease the amount of time that it takes the University's officers to reach the top of the pay scale, this proposal would not work any change in the salary figures that comprise the top of the scale. Apart from moving the University's officers through the longevity matrix at a slightly quicker pace,

it does not appear that the Union's proposal actually would accomplish much by way of decreasing any gap between the pay of the University's officers and the pay earned by officers working for the external comparables. In light of this, the external comparables do not offer much support for the Union's proposal, and they do not serve to establish any particular need for the change to the longevity matrix that the Union seeks.

The other statutory factors either are not relevant to this particular issue or similarly do not help to establish a need for the Union's proposed change to the status quo. As the Union has pointed out, internal comparisons are not as relevant as are external comparables to this issue of the longevity matrix because of the differences in the nature of employment between the University's officers and its non-law-enforcement employees and because these other employees do not have access to interest arbitration. The officers' overall compensation is relevant to this issue, but, as pointed out above, the adoption of the Union's wage proposal and the fact that there will be no contractual provision calling for closure days together support maintaining the status quo on the longevity matrix. Rearranging two of the longevity steps is not necessarily meaningful in terms of the impact of the consumer price index on the officers' pay, and the other statutory factors similarly do not have any real connection to or impact on this particular proposal.

Based on this analysis, it is evident that the Union has failed to establish any real need for its proposed change to the longevity matrix. Any positive impact that this change might have on the officers' overall pay is, quite simply, too minor to justify this change to the status quo.

Accordingly, this Arbitrator finds that the University's proposal to maintain the status quo on the issue of longevity steps is more reasonable and appropriate in light of the relevant statutory factors and evidence. The University's proposal on this issue therefore shall be adopted, and the structure of the longevity wage scale incorporated into the parties' collective bargaining agreement therefore shall remain unchanged.

3. Shift Differential

The Union's final offer on the impasse issue of shift differential is as follows: Effective July 1, 2012, the shift differential shall be increased to \$.40 cents per hour.

The University's final offer on the impasse issue of shift differential is to maintain the status quo.

As with the preceding issue, the Union is proposing a change to the status quo, so it bears the burden of proof here. In support of its proposal, the Union points to past incremental increases in the shift differential, as well as the fact that one of the external comparables already pays the forty-cent shift differential that the Union seeks, while another external comparable pays a shift differential of fifty cents. The Union also suggests that its proposal would substantially boost employee morale, while having a minor cost impact upon the University. The Employer counters by asserting that three of the external comparables do not pay a shift differential at all, and that the current shift differential places the Employer near the middle of the range established across the external comparables that do pay a shift differential.

Given that three of the external comparables do not pay any shift differential, as well as the fact that the current thirty-cent differential that the University pays to officers

working the second and third shifts is a little below the average annualized shift differential for those external comparables that do pay shift differentials, it is evident that the external comparables overall do not particularly support the Union's proposal on this issue.

From this Arbitrator's review and analysis of the shift differential issue, it does not appear that any of the other statutory factors support the Union's proposal. Although a shift differential certainly has an impact upon overall compensation, this is not a matter of basic wages, so such statutory factors as consumer price index, the employer's ability to pay, and the interest and welfare of the public do not have much, if any, relevance to the resolution of this dispute. In fact, neither of the parties has referenced any of the remaining factors in connection with this issue. Moreover, the Union has not articulated any compelling need for the change that it seeks. Although employee morale certainly is important to the University and to employers generally, this aspect cannot be utilized as the sole rationale for adopting a proposal. It is not one of the expressly described statutory factors, it cannot be quantified, and no employee proposal ever could be denied if it were to be so utilized.

Under these circumstances, the Union has failed to establish a compelling need to adopt its proposal on the issue of shift differential. Accordingly, this Arbitrator finds that the University's proposal to maintain the status quo on the issue of shift differential is more reasonable and appropriate in light of the relevant statutory factors and evidence. The University's proposal on this issue therefore shall be adopted, and the provision governing shift differential that is included in the parties' collective bargaining agreement therefore shall

remain unchanged.

4. Unpaid Closure Days

The Union's final offer on the impasse issue of unpaid closure days is to maintain the status quo with no reduction in benefit time and with no closure day concession being awarded.

The University's final offer on the impasse issue of unpaid closure days is to require four days of unpaid leave.

Here, the University is proposing a change to the status quo, so it bears the burden of proving a compelling need for requiring four days of unpaid leave from its officers. As opposed to the two previous issues, where the Union was seeking relatively minor changes relating to longevity and shift differential, the University is seeking quite a significant change, one that truly constitutes a breakthrough. For the first time, apparently, the University is asking its police officers to take four days of unpaid leave.

In its effort to support this proposal, the University has emphasized that it imposed unpaid leave days on all of its other employees during fiscal year 2011. Apparently, only the employees represented by the FOP were not required to take unpaid leave days during fiscal year 2011. The University has asserted that a fiscal crisis led to the need for it to impose this unpaid leave on its other employees, who took these days to avoid layoffs. The members of this bargaining unit so far have not taken any unpaid leave days because of the parties' continuing contract negotiations and the pendency of this proceeding.

The University has acknowledged that the fiscal crisis that prompted it to impose unpaid leave on its other employees has passed, but it argues that the members of this

bargaining unit nevertheless must take four unpaid leave days in order to maintain parity with their fellow University employees. The problem with the University's argument on this point is that it is unclear whether and why its front-line, first-responder, public safety employees should maintain parity with non-sworn employees who have no responsibility for campus safety and security. The University's police officers are not on a par with the University's faculty, administrative, and other employees. Each of these employee groups has unique responsibilities and concerns, making it difficult to understand what parity might or should exist between them.

Because the University's officers shoulder such critical safety responsibilities, it is particularly incumbent upon the University to articulate and prove a compelling and rational reason for asking its officers to take unpaid time off. In the admitted absence of any fiscal crisis, it is difficult to imagine what such a reason might be. Alleged parity with non-sworn employees who play no official public safety role is not a sufficient reason to require the police officers to take unpaid leave.

It also is uncertain whether the University is allowed to impose unpaid leave upon its police officers. As the University acknowledged during the hearing, it calls this unpaid leave "closure days" because the state university civil service system will not allow universities to furlough civil service employees, such as the University's police officers. Because "closure days" and "furlough" refer to the same thing, again as acknowledged by the University at the hearing, the simple device of assigning a new name to this step does not make it allowable. Moreover, the Union has argued that by using the term "closure days" to refer to this unpaid leave, the University has brought into

question Section 12.10 of the parties' contract, which is the provision addressing partial or total closure of the University campus under the Administrative Closure Procedure. This provision specifies that bargaining-unit employees regularly scheduled and required to work during such a closure will receive additional compensation at their regular rate for the hours worked or be given compensatory time off, at the individual employee's option. Although it is not conclusively certain from the record here that furloughs, "closure days," or other forms of unpaid time off imposed by the University upon its employees for fiscal reasons represent the type of "partial or total closure" contemplated by this part of the contract, the fact that this question exists casts further doubt upon the basis for the University's proposal here.

The University has not pointed to any of the statutory factors as supporting its proposal. In fact, the record suggests that financial constraints rising to the level of a fiscal crisis prompted the University to impose unpaid leave upon its other employees and to seek to impose such unpaid leave upon its officers, but that fiscal crisis has passed, as the University itself has acknowledged. Whether that fiscal crisis constituted a "financial inability to pay" under Section 14(h)(2) of the Act, or a lesser degree of financial challenges that "are normally or traditionally taken into consideration" under the Act, the fact is that the fiscal crisis has passed and no longer can be considered, if it ever could have been, as one of the statutory factors to be used in analyzing the University's proposal.

Although the University may have been experiencing a fiscal crisis at one point and this crisis may have been a reason for seeking to impose unpaid leave upon its

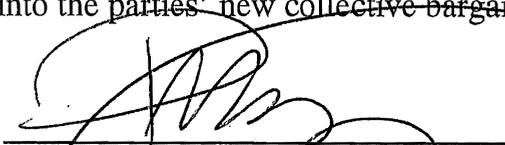
officers, it is not experiencing that same fiscal crisis now. A past fiscal crisis simply does not constitute a compelling reason to seek a contractual provision requiring employees to take four days of unpaid leave after that crisis has ended. This is a very grave and burdensome request to make of employees, particularly because the University has not offered any sort of *quid pro quo*.

I find that the University has failed to establish the existence of any compelling need for its proposal that its officers take four unpaid leave days. Because the University has failed to meet its burden of proof as to this breakthrough proposal, there is no proper or reasonable basis for accepting the University's final offer on the impasse issue of closure days.

Accordingly, this Arbitrator finds that the Union's proposal to maintain the status quo on the issue of closure days is more reasonable and appropriate in light of the relevant statutory factors and evidence. The Union's proposal on this issue therefore shall be adopted, and there shall be no provision on closure days included in the parties' collective bargaining agreement.

Award

This Arbitrator finds that the language set forth in the attached Appendix shall be adopted and incorporated into the parties' new collective bargaining agreement.



PETER R. MEYERS
Impartial Arbitrator

**Dated this 20th day of June 2012
at Chicago, Illinois.**

APPENDIX

I. WAGES

A. Patrol Officers

7/1/2010 – 1% salary increase to each step of the salary matrix

7/1/2011 – 3% salary increase to each step of the salary matrix

7/1/2012 – 3% salary increase to each step of the salary matrix

7/1/2013 – Each step of the pay plan will be adjusted by the announced campus wage program. Should the publicly announced campus wage program fall below 2.5%, either party may request to open negotiations for the purposes of wages only, up to impasse procedures (interest arbitration). This shall not be precedent setting for future wage increases, and does not constitute an acceptance of the historical practice of standard wage increases for future negotiations (breakthrough).

The Union proposes the foregoing salary increases be retroactive to the effective date of each year, where applicable, on all hours paid or worked as if paid. If the Union's final offer is adopted, retroactive amounts due employees to be paid via separate check no later than sixty (60) days after issuance of the Arbitrator's Award.

B. Corporals

7/1/2010 – 1% salary increase to each step of the salary matrix

7/1/2011 – 4% salary increase to each step of the salary matrix

7/1/2012 – 4% salary increase to each step of the salary matrix

7/1/2013 – Each step of the pay plan will be adjusted by the announced campus wage program. Should the publicly announced campus wage program fall below 2.5%, either party may request to open negotiations for the purposes of wages only, up to impasse procedures (interest arbitration). This shall not be precedent setting for future wage increases, and does not constitute an acceptance of the historical practice of standard wage increases for future negotiations (breakthrough).

The Union proposes the foregoing salary increases be retroactive to the effective date of each year, where applicable, on all hours paid or worked as if paid. If the Union's final offer is adopted, retroactive amounts due employees to be paid via separate check no later than sixty (60) days after issuance of the Arbitrator's Award.

II. TENTATIVE AGREEMENTS

All tentative agreements reached between the parties during their collective bargaining negotiations also shall be incorporated, as mutually agreed, within the parties' new collective bargaining agreement.